

## Office of Independent Counsel

## § 701.19

sought in furtherance of scholarly research.

(7) The term *noncommercial scientific institution* refers to an institution that is not operated on a “commercial” basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scientific research.

(8) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. For “freelance”

journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Office shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, when the Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

### § 701.19 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.



## CHAPTER VIII—COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

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## PART 800—ORGANIZATION AND FUNCTIONS

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APPENDIX A TO PART 800—AGENCY ADDRESSES

AUTHORITY: 5 U.S.C. 301; Pub. L. 105-33, 111 Stat. 251, 712 (D.C. Code 24-1232, 24-1233).

SOURCE: 66 FR 1261, Jan. 8, 2001, unless otherwise noted.

### § 800.1 Statutory authorization.

The National Capital Revitalization and Self-Government Improvement Act of 1997 (“Revitalization Act”) established the Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA”) within the federal government as an independent executive branch agency and placed the District of Columbia Pretrial Services Agency as an independent entity within CSOSA. In addition, the District of Columbia Public Defender Service, an independent District of Columbia agency, receives its appropriated federal funds through a transfer from CSOSA.

### § 800.2 Mission.

CSOSA’s mission is to increase public safety, prevent crime, reduce recidivism, and support the fair administration of justice in close collaboration with the community.

### § 800.3 Functions and responsibilities.

(a) *Community Supervision Services.* (1) The Revitalization Act requires CSOSA to provide supervision, through qualified supervision officers, to offenders on probation, parole, and supervised release for violation of District of Columbia Code offenses. The Agency carries out its responsibilities on behalf of the court or agency having jurisdiction over the person being supervised. Accordingly, CSOSA supervises all offenders placed on probation by the Superior Court of the District of Columbia, and all individuals on parole pursuant to the District of Columbia Code. CSOSA supervises offenders from other jurisdictions in accordance with the provisions of the Interstate Parole and Probation Compact.

(2) CSOSA is also required to determine uniform supervision and reporting practices, develop and operate intermediate sanctions programs for sentenced offenders, and arrange for the supervision of District of Columbia Code offenders in jurisdictions outside the District of Columbia.

(3) In accordance with its supervisory functions and as authorized by the Sex Offender Registration Act of 1999 (D.C. Law 13-137, D.C. Code 24-1101 *et seq.*), CSOSA operates and maintains the sex offender registry for the District of Columbia.

(b) *Pretrial Services.* (1) The District of Columbia Pretrial Services Agency (“PSA”) assists the trial and appellate levels of both the federal and local courts in determining eligibility for pretrial release by providing verified background information and criminal histories on all arrestees and recommendations about available release options.

(2) PSA is further responsible for supervising defendants released from custody during the pretrial period by monitoring compliance with conditions of release and by ensuring that they appear for scheduled court hearings.

(3) PSA also provides defendants with the opportunity to participate in a variety of social intervention programs that decrease the likelihood of future criminal behavior.

### § 800.4 Director.

(a) CSOSA is headed by a Director appointed by the President, by and with the advice and consent of the Senate, for a term of six years.

(b) PSA is headed by a Director appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and the Chief Judge of the United States District Court for the District of Columbia in consultation with an Executive Committee. The Executive Committee includes the four chief judges of the local and Federal trial and appellate courts, the United States Attorney for the District of Columbia, the Director of the District of Columbia Public Defender Service, and the Director of CSOSA.

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### § 800.5 Agency components.

- (a) CSOSA.
  - (1) Office of the Director (including the Deputy Director).
  - (2) Office of the General Counsel.
  - (3) Community Supervision Services.
  - (4) Office of Community Justice Programs.
  - (5) Special Criminal Justice Projects.
  - (6) Office of Planning and Evaluation.
  - (7) Office of Professional Responsibility.
  - (8) Equal Employment Opportunity, Diversity, and Special Programs.
  - (9) Office of Legislative, Intergovernmental, and Public Affairs.
  - (10) Information Technology Services.
  - (11) Office of Management and Administration.
  - (12) Office of Human Resources.
- (b) PSA.
  - (1) Office of the Director (including the Deputy Director).
  - (2) Planning, Analysis and Evaluation.
  - (3) Community Justice Programs.
  - (4) Office of Operations (including Information Technology and Forensic Toxicology and Drug Testing Laboratory).
  - (5) Human Resources Management.
  - (6) Finance and Administration.

#### APPENDIX A TO PART 800—AGENCY ADDRESSES

##### I. CENTRAL OFFICES

Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004

CSOSA Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20001

District of Columbia Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004

##### II. FIELD OFFICES

*Court Services and Offender Supervision Agency for the District of Columbia/Community Supervision Services*

CSS Field Office, 409 E. Street, NW., Washington, DC 20001

CSS Field Office, 401 New York Avenue, NE., Washington, DC 20002

CSS Field Office, 1707 Kalorama Road, NW., Washington, DC 20009

CSS Field Office, 1418 Good Hope Road, SE., Washington, DC 20020

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CSS Field Office, 3850 S. Capitol Street, SE., Washington, DC 20032

CSS Field Office, 1230 Taylor Street, NW., Washington, DC 20011

#### *District of Columbia Pretrial Services Agency*

Office of Operations Branch, 300 Indiana Avenue, NW., Washington, DC 20001

Office of Operations Branch, 500 Indiana Avenue, NW., Washington, DC 20001

Office of Operations Branch, 333 Constitution Avenue, NW., Washington, DC 20001

Office of Operations Branch, 601 Indiana Avenue, NW., Washington, DC 20004

#### III. FOIA/PA REQUESTS (CSOSA AND PSA)

Office of the General Counsel (FOIA), Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004

#### IV. SERVICE OF PROCESS (CSOSA AND PSA, EXCEPT FOR PSA SUBPOENAS)

Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004

#### V. TORT CLAIMS (CSOSA AND PSA)

Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004

## PART 801—FEDERAL TORT CLAIMS ACT PROCEDURE

### Sec.

801.1 Claims filed under the Federal Tort Claims Act.

801.2 Filing a claim.

801.3 Processing the claim.

801.4 Final disposition of claim.

AUTHORITY: 5 U.S.C. 301; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1233); 28 CFR 14.11.

SOURCE: 67 FR 57948, Sept. 13, 2002, unless otherwise noted.

### § 801.1 Claims filed under the Federal Tort Claims Act.

If an agency employee is acting within the scope of his or her employment and causes injury to a member of the public, any claim for money damages for personal injury, death, damage to property, or loss of property caused by the employee's negligent or wrongful act or omission is a claim against the

United States and must first be presented by the injured party to the appropriate federal agency for administrative action under the Federal Tort Claims Act. General provisions for processing such administrative claims are contained in 28 CFR part 14. The provisions in this part supplement the general provisions in order to describe specific procedures to follow when filing a claim with the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") or the District of Columbia Pretrial Services Agency ("PSA").

#### § 801.2 Filing a claim.

(a) *Who may file the claim?* You may file a claim for money damages against CSOSA or PSA if you believe that a CSOSA or PSA employee has injured you or has damaged or lost property that you own. You may file a claim on behalf of an injured or deceased person or owner of damaged or lost property if you are acting as agent, executor, administrator, parent, guardian, legal or other representative provided you submit evidence of your authority to act on behalf of the claimant.

(b) *What information do you need to submit in your claim?* (1) The easiest way to ensure that you will include all necessary information for your claim is to submit a completed Standard Form 95 ("SF 95"). The SF 95 is available from the Office of the General Counsel, CSOSA, (see address in paragraph (c) of this section) and on the Internet at <http://www.usdoj.gov/civil/forms/forms.htm>.

(2) If you do not use the SF 95, you must submit written notification of the incident that resulted in the injury, loss, or damage. Along with this notification, you must present a claim for money damages in a sum certain (that is, a precise dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred on the basis of the incident. Failure to include the precise dollar amount for your claim may mean that you will have difficulty pursuing your claim in court.

(c) *Where do you submit the claim?* You should submit the claim (whether against CSOSA or PSA) directly to the Office of the General Counsel, CSOSA,

633 Indiana Avenue NW., Washington, DC 20004. Claims submitted to any other office of CSOSA or PSA are forwarded to the Office of the General Counsel.

(d) *When must you submit the claim?* You must submit the claim so that CSOSA/PSA receives the claim within 2 years after the claim accrues. Mailing the claim by that date is not sufficient if CSOSA/PSA does not receive the claim by that date. Generally speaking, a claim accrues at the time of the injury. In those instances where neither the injury nor its cause is immediately apparent, the claim accrues when you discover (or reasonably should discover) the injury and its cause.

(e) *May you amend your claim?* Yes, you may amend your claim at any time prior to final agency action or prior to your filing suit in court.

#### § 801.3 Processing the claim.

(a) *Will CSOSA/PSA contact you about your claim?* (1) If you have provided all necessary information to process your claim, you will receive an acknowledgement indicating the filing date (that is, the date CSOSA/PSA received your claim) and the assigned claim number. Refer to the claim number in any further correspondence you may have with CSOSA/PSA on the claim.

(2) If you have failed to include all necessary information, CSOSA/PSA will return your claim to you with a request for the necessary additional information.

(3) If your claim should have been filed with another agency, CSOSA/PSA will forward the claim to the appropriate agency and notify you of the transfer, or return the claim to you if the appropriate agency cannot be determined or if the transfer is otherwise not feasible.

(b) *Who is responsible for offering settlement or denial on the claim?* The General Counsel is responsible for investigating the claim and, after consultation with PSA (if the claim is against PSA) and the Department of Justice when appropriate, determining whether the claim should be settled or denied.

(c) *How long does CSOSA/PSA have to consider your claim?* CSOSA/PSA has 6 months from the date of filing to make

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a settlement offer or to deny your claim. If you amend your claim (see § 801.2(e)) or request that your claim be reconsidered (see § 801.4(b)(1)), CSOSA/PSA has an additional 6 months from the date of the amendment or the filing of the request for reconsideration to make a final disposition of the claim.

(d) *Will appreciation or depreciation be considered?* Yes, appreciation or depreciation is considered in settling a claim for lost or damaged property.

### § 801.4 Final disposition of claim.

(a) *What if you accept the settlement offer?* If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(b) *What if your claim is denied?* (1) If your claim is denied, you have 30 days from the date of CSOSA/PSA's written notification to make a written request that the agency reconsider the denial.

(2) If your claim is denied or you reject the settlement offer, you have 6 months from the date of mailing of CSOSA/PSA's notice of denial to file a civil action in the appropriate U.S. District Court.

(c) *What if you do not hear from CSOSA/PSA within 6 months of the filing date?* If you do not hear from CSOSA/PSA within 6 months of the filing date for the claim, you may consider your claim denied. You may then proceed with filing a civil action in the appropriate U.S. District Court.

## PART 802—DISCLOSURE OF RECORDS

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AUTHORITY: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

SOURCE: 68 FR 32986, June 3, 2003, unless otherwise noted.

### Subpart A—General

#### § 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA” or “Agency”) and the District of Columbia Pretrial Services Agency (“PSA” or “Agency”) which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.



**Subpart B—Freedom of Information Act****§ 802.2 Purpose and scope.**

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

**§ 802.3 Guidelines for disclosure.**

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system or through the FEDERAL REGISTER or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

**§ 802.4 Definitions.**

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review*, for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

**§ 802.5 Freedom of Information Act requests.**

(a) *Submission, processing, and release procedures.* (1) Requests for any record (including policy) ordinarily will be

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processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope “Freedom of Information Request.”

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope “Freedom of Information Act Request.”

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than \$25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your

request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

### § 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

### § 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at

the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.* (1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Freedom of Information Act Appeal."

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be re-

leased, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

#### § 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information. The standard of "widespread and exceptional media interest" requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date]."

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple

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fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked “Expedited Processing Appeal.”

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

### § 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter’s objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter’s objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter’s disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

#### § 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves

filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records

and shall be based upon a review of the requester's submission and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than \$250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed \$250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed \$250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the

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full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total \$10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by \$0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) \$7.00 per quarter hour for clerical staff;

(ii) \$10.00 per quarter hour for professional staff; and

(iii) \$14.00 per quarter hour for managerial personnel.

(3) *Only fees in excess of \$10.00 will be assessed.* This means that the total cost must be greater than \$10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "all other" category, when the cost of the search (including the operator time and the cost of operating the computer to process a re-

quest) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.*, the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

### Subpart C—Privacy Act

#### § 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

#### § 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

#### § 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C.

552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is required under FOIA when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the FEDERAL REGISTER.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the FEDERAL REGISTER.

#### § 802.14 Requests for access to records.

(a) *Submission and processing procedures.* (1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope “Privacy Act Request.”

(2) Your request will be considered received as of the date it is received by the Office of the General Counsel. For quickest possible handling, you should mark both your request letter and the envelope “Privacy Act Request.”

(3) You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional



information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(b) *Release and review procedures.* Upon written request by an individual to gain access to his or her records which are not otherwise exempted, CSOSA shall permit the individual and, upon the individual's request, a person of his or her choosing to accompany him or her, to review the record and have a copy of all or any portion of the record. If a document contains information exempt from disclosure under the Privacy Act, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

#### § 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the PA and FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to an administrative appeal in accordance with § 802.16; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing.

The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with § 802.16. The notification shall specify the official or office to which the appeal shall be submitted for review.

#### § 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part; or

(2) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Privacy Act Appeal."

(c) The General Counsel will make an appeal determination within 30 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

#### § 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency,

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the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

### § 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked “Privacy Act Correction Request.” Your request should indicate:

- (a) The system of records from which the record is retrieved;
- (b) The particular record which you want to correct or amend;
- (c) Whether you want to add, delete or substitute information in the records; and
- (d) Your reasons for believing that your record should be corrected or amended.

### § 802.19 Appeal of denial to correct or amend.

(a) The system manager may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the FEDERAL REGISTER and exempted from the Privacy Act provisions allowing amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the re-

quester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, “PRIVACY APPEAL—DENIAL OF CORRECTION,” and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

- (i) That your request has been refused and the reason;
- (ii) That this refusal is the Agency’s final decision;
- (iii) That you have a right to seek court review of this request to amend the record; and
- (iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

### § 802.20 Accounting of disclosures.

(a) We will provide an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that no accounting will be provided to the record subject for disclosures made to law enforcement agencies and no accounting will be made for:

- (1) Disclosures made under the FOIA;
- (2) Disclosures made within the agency; and

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(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

### § 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

### § 802.22 Fees.

The Agency shall charge fees under the Privacy Act for duplication of records only. These fees shall be at the same rate the Agency charges for duplication fees under the Freedom of Information Act (See § 802.10(i)(1)).

### § 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

## Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

### § 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

### § 802.25 Definitions.

*Demand* means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

*Employee* includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person

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who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

*Legal Proceeding* includes any pre-trial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

### § 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

### § 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand

was made shall respectfully decline to produce the information under *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) To achieve the purposes noted in paragraphs (a)(1) through (6) of this section, the agency will consider factors such as the following in determining whether a demand should be complied with:

- (1) The Privacy Act, 5 U.S.C. 552a;
- (2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 *et seq.*;
- (3) The Victims Rights Act, 42 U.S.C. 10606(b);
- (4) D.C. statutes and regulations;
- (5) Any other state or federal statute or regulation;
- (6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;
- (7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;
- (8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection; and
- (9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

### Subpart E—Exemption of Records Systems Under the Privacy Act

#### § 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

- (a)(1) The following systems of records are exempt from 5 U.S.C.

552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

- (i) Background Investigation (CSOSA-2).
- (ii) Supervision Offender Case File (CSOSA-9).
- (iii) Pre-Sentence Investigations (CSOSA-10).
- (iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA-11).
- (v) Recidivism Tracking Database (CSOSA-12).
- (vi) [Reserved].
- (vii) Substance Abuse Treatment Database (CSOSA-15).
- (viii) Screener (CSOSA-16).
- (ix) Sex Offender Registry (CSOSA-18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose

of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved]

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an

investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which

may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

#### **§ 802.29 Exemption of the Pretrial Services Agency System.**

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA-1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA-2).

(iii) Interview and Treatment Files (CSOSA/PSA-3).

(iv) Pretrial Realtime Information Systems Manager (PRISM) (CSOSA/PSA-6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because defendants/offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essen-

tial to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to defendants/offenders, to prevent disclosure of information to defendants/offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from defendants/offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.



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(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved]

### PART 803—AGENCY SEAL

Sec.

803.1 Description.

803.2 Authority to affix seal.

803.3 Use of the seal.

AUTHORITY: 5 U.S.C. 301; Pub. L. 105-33, 111 Stat. 251, 712 (D.C. Code 24-1232, 24-1233).

SOURCE: 69 FR 21059, Apr. 20, 2004, unless otherwise noted.

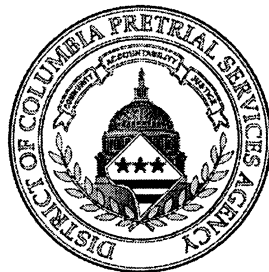
#### § 803.1 Description.

(a) The Agency seal of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words "Community, Accountability, and Justice" and gold laurel branches, with gold edges bearing the inscription "COURT SERVICES AND OFFENDER SUPERVISION AGENCY" above three stars at

either side of the words "DISTRICT OF COLUMBIA" in smaller letters in the base; letters and stars in gold. A reproduction of the Agency seal in black and white appears as follows.



(b) The Agency seal of the District of Columbia Pretrial Services Agency (PSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words "Community, Accountability, and Justice" and gold laurel branches, with gold edges bearing the inscription "DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY"; letters in gold. A reproduction of the Agency seal in black and white appears as follows.



#### § 803.2 Authority to affix seal.

The Director of CSOSA or PSA (as appropriate) and the Director's designees are authorized to affix the Agency seal (including replicas and reproductions) to appropriate documents, certifications, and other materials of all purposes authorized by this part.

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#### § 803.3 Use of the seal.

(a) The Agency seal is used by Agency staff for official agency business as approved by the appropriate Director or designee.

(b) Use of the Agency seal by any person or organization outside of the Agency may be made only with the appropriate prior written approval.

(1) Any request for such use must be made in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004, and must specify, in detail, the exact use to be made. Any permission granted by the appropriate Director or designee applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(2) The decision whether to grant such a request is made on a case-by-case basis, with consideration of all relevant factors, which may include: the benefit or cost to the government of granting the request; the unintended appearance of endorsement or authentication by the Agency; the potential for misuse; the effect upon Agency security; the reputability of the use; the extent of the control by the Agency over the ultimate use; and the extent of control by the Agency over distribution of any products or publications bearing the Agency seal.

(c) Falsely making, forging, counterfeiting, mutilating, or altering the Agency seal or reproduction, or knowingly using or possessing with fraudulent intent an altered Agency seal or reproduction is punishable under 28 U.S.C. 506.

(d) Any person using the Agency seal or reproduction in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Agency seal, and other provisions of law as applicable.

### PART 804—ACCEPTANCE OF GIFTS

Sec.

804.1 Purpose.

804.2 Delegation of authority.

804.3 Restrictions.

804.4 Submission and approval.

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804.5 Audit and public inspection.

AUTHORITY: 5 U.S.C. 301; Public Law 107–96, 115 Stat. 923, 931.

SOURCE: 69 FR 21060, Apr. 20, 2004, unless otherwise noted.

#### § 804.1 Purpose.

By statute, the Director of the Court Services and Offender Supervision Agency (CSOSA or Agency) is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and of equipment and vocational training services to educate and train offenders and defendants. The purpose of this part is to:

(a) Inform the public of the procedures to follow when offering a gift;

(b) Establish criteria for accepting and using gifts;

(c) Establish procedures for audit and public inspection of records pertaining to the acceptance and use of gifts; and

(d) Delegate gift acceptance authority to the Director of the Pretrial Services Agency (PSA or Agency).

#### § 804.2 Delegation of authority.

The Director of CSOSA hereby delegates to the Director of PSA the authority to accept and use gifts in the form of in-kind contributions of space and hospitality to support defendant programs, and of equipment and vocational training services to educate and train defendants in accordance with the requirements of this part. This delegation of authority may not be further delegated.

#### § 804.3 Restrictions.

(a) The Agency is not authorized to accept gifts of money, stock, bonds, personal or real property, or devises or bequests of such items, except as provided in this part.

(b) Agency employees may not solicit any type of gift to the Agency.

#### § 804.4 Submission and approval.

(a) *Offender programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support offender programs, or equipment or vocational training services to educate and train

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offenders may submit the following information in writing to the Agency's Ethics Officer in the Office of the General Counsel:

- (i) The name of the person or organization offering the gift;
- (ii) A description of the gift;
- (iii) The estimated value of the gift;
- (iv) Any restrictions on the gift placed by the donor; and
- (v) A signed statement that the gift is unsolicited.

(2) The Director, after consultation with the Agency's Ethics Officer, shall determine whether to accept or reject the gift.

(3) CSOSA staff shall advise the person offering the gift of the Agency's determination, including, if applicable, the reason for rejection. Reasons for rejecting a gift include findings that:

- (i) There is a conflict of interest in accepting the gift;
- (ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;
- (iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or
- (iv) Operation of the program, equipment, or vocational training services would not be practicable.

(b) *Defendant programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support defendant programs, or equipment or vocational training services to educate and train defendants may submit the following information in writing to the Agency's Ethics Officer in the Office of the General Counsel:

- (i) The name of the person or organization offering the gift;
- (ii) A description of the gift;
- (iii) The estimated value of the gift;
- (iv) Any restrictions on the gift placed by the donor; and
- (v) A signed statement that the gift is unsolicited.

(2) The General Counsel shall forward the request to PSA's Director with a recommendation whether to accept or reject the gift.

(3) PSA staff shall advise the person offering the gift of the Agency's determination, including the reason for re-

jection. Reasons for rejecting a gift include findings that:

- (i) There is a conflict of interest in accepting the gift;
- (ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;
- (iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or
- (iv) Operation of the program, equipment, or vocational training services would not be practicable.

### §804.5 Audit and public inspection.

(a) Records regarding the acceptance and use of gifts shall be made available for Federal Government audit.

(b) Public inspection of records regarding the acceptance and use of gifts shall be afforded through Freedom of Information Act requests (*see* 28 CFR part 802).

## PART 810—COMMUNITY SUPERVISION: ADMINISTRATIVE SANCTIONS

Sec.

810.1 Supervision contact requirements.

810.2 Accountability contract.

810.3 Consequences of violating the conditions of supervision.

AUTHORITY: Pub. L. 105-33, 111 Stat. 712 (D.C. Code 24-1233(b)(2)(B)).

SOURCE: 66 FR 48337, Sept. 20, 2001, unless otherwise noted.

### §810.1 Supervision contact requirements.

If you are an offender under supervision by the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA"), CSOSA will establish a supervision level for you and your minimum contact requirement (that is, the minimum frequency of face-to-face interactions between you and a Community Supervision Officer ("CSO")).

### §810.2 Accountability contract.

(a) Your CSO will instruct you to acknowledge your responsibilities and obligations of being under supervision (whether through probation, parole, or supervised release as granted by the releasing authority) by agreeing to an accountability contract with CSOSA.

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(b) The CSO is responsible for monitoring your compliance with the conditions of supervision. The accountability contract identifies the following specific activities constituting substance abuse or non-criminal violations of your conditions of supervision.

(1) *Substance abuse violations.*

(i) Positive drug test.

(ii) Failure to report for drug testing.

(iii) Failure to appear for treatment sessions.

(iv) Failure to complete inpatient/outpatient treatment programming.

(2) *Non-criminal violations.*

(i) Failure to report to the CSO.

(ii) Leaving the judicial district without the permission of the court or the CSO.

(iii) Failure to work regularly or attend training and/or school.

(iv) Failure to notify the CSO of change of address and/or employment.

(v) Frequenting places where controlled substances are illegally sold, used, distributed, or administered.

(vi) Associating with persons engaged in criminal activity.

(vii) Associating with a person convicted of a felony without the permission of the CSO.

(viii) Failure to notify the CSO within 48 hours of being arrested or questioned by a law enforcement officer.

(ix) Entering into an agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court or the United States Parole Commission (“USPC”).

(x) Failure to adhere to any general or special condition of release.

(c) The accountability contract will identify a schedule of administrative sanctions (see §810.3(b)) which may be imposed for your first violation and for subsequent violations.

(d) The accountability contract will provide for a reduction in your supervision level and/or the removal of previously imposed sanctions if:

(1) You maintain compliance for at least ninety days,

(2) The Supervisory Community Supervision Officer concurs with this assessment, and

(3) There are no additional reasons unrelated to the imposed sanction requiring the higher supervision level.

### §810.3 Consequences of violating the conditions of supervision.

(a) If your CSO has reason to believe that you are failing to abide by the general or specific conditions of release or you are engaging in criminal activity, you will be in violation of the conditions of your supervision. Your CSO may then impose administrative sanctions (see paragraph (b) of this section) and/or request a hearing by the releasing authority. This hearing may result in the revocation of your release or changes to the conditions of your release.

(b) Administrative sanctions available to the CSO include:

(1) Daily check-in with supervision for a specified period of time;

(2) Increased group activities for a specified period of time;

(3) Increased drug testing;

(4) Increased supervision contact requirements;

(5) Referral for substance abuse addiction or other specialized assessments;

(6) Electronic monitoring for a specified period of time;

(7) Community service for a specified number of hours;

(8) Placement in a residential sanctions facility or residential treatment facility for a specified period of time.

(9) Travel restrictions.

(c) You remain subject to further action by the releasing authority. For example, the USPC may override the imposition of any of the sanctions in paragraph (b) of this section and issue a warrant or summons if you are a parolee and it finds that you are a risk to the public safety or that you are not complying in good faith with the sanctions (see 28 CFR 2.85(a)(15)).

### PART 811—SEX OFFENDER REGISTRATION

Sec.

811.1 Purpose and scope; relation to District of Columbia regulations.

811.2 Applicability.

811.3 Notice of obligation to register.

811.4 Determination of the obligation to register and the length of registration.

811.5 Commencement of the obligation to register.

811.6 Duration of the obligation to register.

811.7 Initial registration.

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- 811.8 Review of determination to register.
- 811.9 Periodic verification of registration information.
- 811.10 Changes in registration information.
- 811.11 Compliance.
- 811.12 Penalties.
- 811.13 Notices and appearances.
- 811.14 Definitions.

### APPENDIX A TO PART 811—LISTING OF SEX OFFENDER REGISTRATION OFFENSES BY CLASS

AUTHORITY: 5 U.S.C. 301; Pub. L. 105-33, 111 Stat. 251; Pub. L. 106-113, sec. 166(a), 113 Stat. 1530

SOURCE: 67 FR 54095, Aug. 21, 2002, unless otherwise note.

#### §811.1 Purpose and scope; relation to District of Columbia regulations.

(a) In accordance with its sex offender registration functions authorized by section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106-113, sec. 166(a), 113 Stat. 1530; D.C. Official Code secs. 24-133(c)(5)) and as further authorized by the Sex Offender Registration Act of 1999 (“the Act,” D.C. Law 13-137, D.C. Official Code, secs. 22-4001 *et seq.*), the Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA”) operates and maintains the sex offender registry for the District of Columbia. The regulations in this part set forth procedures and requirements relating to registration, verification, and changes in information for sex offenders who live, reside, work, or attend school in the District of Columbia.

(b) Chapter 4 of Title 6A, District of Columbia Municipal Regulations (DCMR)(47 D.C. Reg. 10042, December 22, 2000), contains regulations issued by the government of the District of Columbia for the sex offender registration system in the District of Columbia (“District of Columbia regulations”). Chapter 4 of Title 6A, DCMR (47 D.C. Reg. 10042, December 22, 2000) is incorporated by reference in this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Chapter 4 of Title 6A, DCMR, is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

*code\_of\_federal\_regulations/ibr\_locations.html*. Copies of Chapter 4 of Title 6A, DCMR, may be obtained from the District of Columbia’s Office of Documents and Administrative Issuances, 441 4th Street, NW., Room 520S, Washington, DC 20001. CSOSA hereby adopts all powers and authorities that the District of Columbia regulations authorize CSOSA to exercise, and hereby adopts all procedures and requirements that the District of Columbia regulations state that CSOSA shall adopt or carry out, including but not limited to all such powers, authorities, procedures and requirements relating to registration, verification, and changes in information.

[67 FR 54095, Aug. 21, 2002, as amended at 69 FR 18803, Apr. 9, 2004]

#### §811.2 Applicability.

(a) Sex offender registration requirements apply to all persons who live, reside, work, or attend school in the District of Columbia, and who:

(1) committed a registration offense on or after July 11, 2000;

(2) committed a registration offense at any time and were in custody or under supervision on or after July 11, 2000;

(3) were required to register under the law of the District of Columbia as was in effect on July 10, 2000; or

(4) committed a registration offense at any time in another jurisdiction and, within the registration period (see §§811.5 and 811.6), entered the District of Columbia to live, reside, work or attend school.

(b) “Committed a registration offense” means that a person was found guilty or found not guilty by reason of insanity of a registration offense or was determined to be a sexual psychopath. Registration offenses are defined in section 2(8) of the Sex Offender Registration Act of 1999 (D.C. Official Code §22-4001(8)), subject to the exceptions in section 17(b) of that Act (D.C. Official Code section 22-4016), and are listed descriptively in the Appendix to Part 811 (which also provides information on registration and notification classes). Any future revision to the

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statutory provisions designating registration offenses will be effective notwithstanding the timing of any conforming revision of these regulations, including the Appendix.

#### **§811.3 Notice of obligation to register.**

(a) Sex offenders may be notified of their obligation to register under various provisions of law. See sections 4, 6 and 8 of the Sex Offender Registration Act of 1999 (D.C. Official Code sections 22–4003, 4005, 4007) (relating to notice by the District of Columbia Superior Court, Department of Corrections, or CSOSA); 18 U.S.C. 4042(c) (relating to notice by Federal Bureau of Prisons and probation offices); 18 U.S.C. 3563(a)(8), 3583(d), 4209(a) (inclusion of registration requirements as conditions of release under federal law); 42 U.S.C. 14071(b)(1) (notice under federal law standards for state sex offender registration programs).

(b) In some cases, sex offenders may not be notified of their obligation to register. Lack of notice does not excuse a failure to register because sex offenders have an independent obligation to register. Persons who have been convicted or found not guilty by reason of insanity of a sex offense or who have been determined to be a sexual psychopath should report to CSOSA in order to ascertain whether they are required to register.

#### **§811.4 Determination of the obligation to register and the length of registration.**

(a) If the Superior Court finds that a person committed a registration offense, the Superior Court enters an order certifying that the person is a sex offender and that the person is subject to registration for a prescribed period of time (see §811.6).

(b) If a court order has not been entered certifying that a person is a sex offender and that the person is subject to registration for a prescribed period of time, CSOSA makes those determinations. CSOSA also determines the notification classification if the Court has not done so. Facts on which CSOSA's determination may be based include:

(1) The offense or offenses of conviction (or finding of not guilty by reason

of insanity) or a determination that the person is a sexual psychopath;

(2) For certain offenses, facts that may not be apparent on the face of the conviction (or finding of not guilty by reason of insanity), such as:

(i) the age of the victim;

(ii) whether force was involved; or

(iii) whether the offense involved an undercover law enforcement officer who was believed to be an adult;

(3) Prior criminal history;

(4) For an offense committed in or prosecuted under the law of another jurisdiction, whether the offense involved conduct that was the same as or substantially similar to a District of Columbia registration offense; and

(5) The amount of time that has elapsed as computed under §811.6.

#### **§811.5 Commencement of the obligation to register.**

(a) A sex offender's obligation to register starts when the sex offender is found guilty or not guilty by reason of insanity of a registration offense or is determined to be a sexual psychopath. However, CSOSA may suspend registration requirements during any period of time in which a sex offender is detained, incarcerated, confined, civilly committed, or hospitalized in a secure facility.

(b) A sex offender must register if the sex offender is placed on probation, parole, supervised release, or convalescent leave, is conditionally or unconditionally released from a secure facility, is granted unaccompanied grounds privileges or other unaccompanied leave, absconds or escapes, is otherwise not detained, incarcerated, confined, civilly committed, or hospitalized in a secure facility, or enters the District of Columbia from another jurisdiction to live, reside, work, or attend school. Registration shall be effectuated as provided in §811.7 and may be carried out prior to the occurrence of a circumstance described in this paragraph, including the release of or granting of leave to a sex offender.

**§811.6 Duration of the obligation to register.**

(a) *Lifetime registration.* The registration period for a sex offender who is required to register for life shall end upon the sex offender's death.

(b) *Term of years registration.* (1) The registration period for any other sex offender shall end upon the expiration of the sex offender's probation, parole, supervised release, conditional release, or convalescent leave, or ten years after the sex offender is placed on probation, parole, supervised release, conditional release, or convalescent leave, or is unconditionally released from a correctional facility, prison, hospital or other place of confinement, whichever is latest.

(2) In computing ten years, CSOSA will not count:

(i) Any time in which the sex offender has failed to register or otherwise failed to comply with requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations;

(ii) Any time in which a sex offender is detained, incarcerated, confined, civilly committed, or hospitalized in a mental health facility; and

(iii) Any time in which a sex offender was registered prior to a revocation of probation, parole, supervised release, conditional release, or convalescent leave.

(3) In computing ten years, CSOSA will count any time in which a sex offender was registered in another jurisdiction unless that time is not counted because of a circumstance set forth in paragraph (b)(2) of this section.

(c) *Reversal, vacation, or pardon.* A person's obligation to register terminates if the person's conviction, finding of not guilty by reason of insanity, or finding that the person is a sexual psychopath is reversed or vacated, or if the person has been pardoned for the offense on the ground of innocence, and the person has committed no other offenses for which registration is required.

(d) *Termination of obligation to register in the District of Columbia under other circumstances.* A sex offender's obligation to register in the District of Co-

lumbia terminates if the sex offender no longer lives, resides, works or attends school in the District of Columbia. However, the obligation to register in the District of Columbia resumes if the sex offender re-enters the District of Columbia within the registration period to live, reside, work or attend school.

**§811.7 Initial registration.**

(a) *Duties of sex offender.* (1) A sex offender must notify CSOSA within 3 days of the occurrence of any circumstance described in §811.5(b), including but not limited to being sentenced to probation, being released (including any escape or abscondance) from incarceration or confinement, or entering the District of Columbia to live, reside, work, or attend school.

(2) A sex offender must meet with a responsible officer or official, as directed by CSOSA, for the purpose of registration, and must cooperate in such a meeting, including:

(i) Providing any information required for registration and cooperating in photographing and fingerprinting;

(ii) Reviewing information obtained by CSOSA pursuant to paragraph (b) of this section as CSOSA directs and either attesting to its accuracy or setting forth in writing, under penalties of perjury, the exact portion or portions that are not accurate; and

(iii) Acknowledging receipt of information concerning the sex offender's duties under the Act, including reading (or, if the sex offender cannot read, listening to a reading of) and signing a form or forms stating that these duties have been explained to the sex offender.

(3) In case of disagreement with CSOSA's determination that the person must register or with CSOSA's determination of the person's classification for purposes of registration or notification, the person must follow the review procedures set forth in §811.8.

(b) *Duties of CSOSA.* (1) CSOSA shall obtain information relating to the sex offender for the purpose of registration including:

(i) Name(s) and alias(es);

(ii) Date of birth;

(iii) Physical description such as sex, race, height, weight, eye color, hair

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color, tattoos, scars, or other marks or characteristics;

(iv) Social security, PDID, DCDC and FBI numbers;

(v) Driver's license number and make, model, color, and license plate number of any motor vehicle(s) the sex offender owns;

(vi) A photograph and set of fingerprints;

(vii) Current and/or anticipated home, school, work address(es) and telephone number(s); and

(viii) Other information that may assist CSOSA or the Metropolitan Police Department in locating the sex offender.

(2) CSOSA shall also obtain a detailed description of the offense(s) on the basis of which a sex offender is required to register, the presentence report(s), the victim impact statement(s), the date(s) of conviction and any sentence(s) imposed, the sex offender's criminal record and a detailed description of any relevant offense or offenses, pertinent statutes and case law in other jurisdictions, and any other information it deems useful in order to determine a sex offender's obligation to register, term of registration, and notification classification, to verify the accuracy of the information provided, to assist other jurisdictions' sex offender registration agencies and authorities, or to assist the Metropolitan Police Department in its law enforcement functions.

(3) CSOSA shall inform a sex offender of the sex offender's duty to:

(i) Comply with the requirements set forth in paragraph (a) of this section for initial registration;

(ii) Periodically verify the address(es) at which the sex offender lives, resides, works, and/or attends school, and other information, as provided in § 811.9;

(iii) Report any change of address and any other changes in registration information (including changes in appearance), as provided in § 811.10;

(iv) Notify CSOSA if the sex offender is moving to another jurisdiction or works or attends school in another jurisdiction and to register in any such jurisdiction; and

(v) Comply with the requirements of the Act and any procedures, require-

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ments, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations.

(4) CSOSA shall inform the sex offender of the penalties for failure to comply with the sex offender's duties.

(5) If the Superior Court has not entered an order certifying that a person is a sex offender, CSOSA shall inform the person that, if the person disagrees with CSOSA's determination that the person must register or CSOSA's determination of the person's classification for purposes of registration or notification, then the person must follow the review procedures set forth in § 811.8. CSOSA shall provide the person with a form to notify CSOSA of an intent to seek such review.

### § 811.8 Review of determination to register.

(a) If a person, other than a person who has been certified as a sex offender by the Court, disagrees with CSOSA's determination that the person is subject to registration or with CSOSA's determination of the person's classification for purposes of registration or notification, the person may seek judicial review of the determination, subject to the limitations of section 5(a)(1) of the Act (D.C. Official Code § 22-4004(a)(1)), by:

(1) Immediately providing CSOSA with a notice of intent to seek review upon being informed of the determination; and

(2) Within 30 calendar days of the date on which the person is informed of CSOSA's determination, filing a motion in the Superior Court setting forth the disputed facts and attaching any documents or affidavits upon which the person intends to rely.

(b) A person who fails to comply with paragraph (a) of this section may seek review of CSOSA's determination only in conformity with the limitations of section 5(a)(1) of the Act (D.C. Official Code Section 4004(a)(1)) and for good cause shown and to prevent manifest injustice by filing a motion in the Court within three years of the date on which the person is informed of CSOSA's determination.



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### § 811.9 Periodic verification of registration information.

(a) Sex offenders who are required to register for life must verify registration information quarterly pursuant to the procedures set forth in paragraph (d) of this section.

(b) All other sex offenders must verify registration information annually pursuant to the procedures set forth in paragraph (d) of this section.

(c) Quarterly or annually, as appropriate, CSOSA will mail a verification form to the home address of the sex offender.

(d) The sex offender must correct any information on the form which is inaccurate or out of date and must sign, thumb-print, and return the form to CSOSA no later than 14 calendar days after the date on which CSOSA placed it in the mail. The sex offender has the option of returning the form by mail or in person unless:

(1) The sex offender is also on probation, parole, or supervised release or otherwise must report to CSOSA, and CSOSA directs the sex offender to verify the registration information in person;

(2) CSOSA directs the sex offender to appear in person because the sex offender has previously failed to submit a timely verification or submitted an incomplete or inaccurate verification; or

(3) CSOSA directs the sex offender to appear in person for the purpose of taking a new photograph documenting a significant change in physical appearance or updating a photograph that is five or more years old.

### § 811.10 Changes in registration information.

(a)(1) A sex offender must notify CSOSA if the sex offender:

(i) Ceases to live or reside at the registered address or moves to a different address;

(ii) leaves a job or obtains a new job, or leaves a school or enrolls in a new school; or

(iii) ceases to own or becomes an owner of any motor vehicle.

(2) A sex offender must notify CSOSA if there is a significant change in the sex offender's appearance and report as directed for the purpose of having a new photograph taken. Any question

regarding whether a change in physical appearance is significant is to be referred to CSOSA.

(3) A sex offender must notify CSOSA if the sex offender is moving to another jurisdiction or if the sex offender works or attends school in another jurisdiction and must register in any such jurisdiction.

(b) Notice of the changes described in paragraph (a) of this section must be in writing and must be provided prior to the change if feasible and in any event within three days of the change. Notices of change in address or place of work or school attendance must include new address, location, and phone number information. Notice relating to ownership of a motor vehicle must include the make, model, color, and license plate number of the vehicle.

### § 811.11 Compliance.

(a) A sex offender may be excused from strict compliance with the time limits set forth in these regulations if the sex offender notifies CSOSA in advance of circumstances that will interfere with compliance and makes alternative arrangements to satisfy the requirements or, in the case of an emergency, notifies CSOSA as soon as the sex offender is able to do so.

(b) CSOSA may direct that a sex offender meet with a responsible officer or official for the purpose of securing compliance or discussing non-compliance with any requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations.

### § 811.12 Penalties.

A violation of the requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations, may result in criminal prosecution under section 16 of the Act (D.C. Official Code Section 22-4015), revocation of probation, parole, supervised release, or conditional release, and extension of the registration period under § 811.6(b)(2).

**§ 811.13 Notices and appearances.**

Unless otherwise directed by the Court or CSOSA,

(a) Notices or reports that are required to be submitted in writing should be sent to: Sex Offender Registration Unit, Court Services and Offender Supervision Agency, Room 2002, 300 Indiana Avenue, NW., Washington, DC 20001.

(b) A person who is required to report in person should go to: Sex Offender Supervision Office, Court Services and Offender Supervision Agency, Room 2002, 300 Indiana Avenue, NW., Washington, DC 20001.

**§ 811.14 Definitions.**

(a) The terms “attends school,” “Court,” “in custody or under supervision,” “sex offender,” and “works” shall have the same meaning as set forth in Section 2 of the Sex Offender Registration Act of 1999 (D.C. Official Code Section 22–4001).

(b) The term “the Act” means the Sex Offender Registration Act of 1999 (D.C. Official Code Section 22–4001 *et seq.*).

(c) The term “days” means business days unless otherwise specified.

(d) In relation to a motor vehicle, the term “owns” includes both exclusive ownership and co-ownership, and the term “owner” includes both exclusive owners and co-owners.

**APPENDIX A TO PART 811—LISTING OF  
SEX OFFENDER REGISTRATION OF-  
FENSES BY CLASS**

**CLASS A OFFENDERS—ALL LIFETIME  
REGISTRANTS**

(D.C. Official Code Secs. 22–4001(6), 4002(b),  
4011(b)(2)(A))

1. Class A includes offenders who have been convicted or found not guilty by reason of insanity of:

- (a) First degree sexual abuse;
- (b) Second degree sexual abuse;
- (c) Rape;
- (d) Forcible sodomy;
- (e) First degree child sexual abuse committed against a child under 12;
- (f) Carnal knowledge (statutory rape) committed against a child under 12;
- (g) Sodomy committed against a child under 12;

(h) Murder committed before, during, or after engaging in or attempting to engage in a sexual act or contact or rape;

(i) Manslaughter committed before, during, or after engaging in or attempting to engage in a sexual act or contact or rape;

(j) Attempting to commit any of the foregoing offenses;

(k) Conspiring to commit any of the foregoing offenses; or

(l) Assault with intent to commit any of the foregoing offenses.

2. Class A also includes offenders who:

(a) In two or more trials or plea proceedings, have been convicted or found not guilty by reason of insanity of a felony registration offense or any registration offense against a minor. (Recidivism).

(b) In a single trial or plea proceeding, have been convicted or found not guilty by reason of insanity of registration offenses against two or more victims where each offense is a felony or committed against a minor (Multiple victims).

(c) Have been determined to be sexual psychopaths.

3. Class A also includes offenders who have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is the same as or substantially similar to that above.

**CLASS B OFFENDERS—“TEN YEAR”  
REGISTRANTS**

(Other Offenses Against Minors, Wards,  
Patients, or Clients)

(D.C. Official Code Secs. 22–4001(8), 4002(a),  
4011(b)(2)(B))

1. Class B includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity of any of the following crimes against a minor (that is, a person under the age of 18):

- (a) Third degree sexual abuse;
- (b) Fourth degree sexual abuse;
- (c) Misdemeanor sexual abuse;
- (d) First degree child sexual abuse;
- (e) Second degree child sexual abuse;
- (f) Carnal knowledge (statutory rape);
- (g) Sodomy committed against a minor;
- (h) Indecent acts on a child;
- (i) Enticing a child;
- (j) Lewd, indecent or obscene acts;
- (k) Sexual performance using a minor;
- (l) Incest;
- (m) Obscenity;
- (n) Prostitution/Pandering;
- (o) Assault (unwanted sexual touching);
- (p) Threatening to commit a sexual offense;
- (q) First or second degree burglary with intent to commit sex offense;
- (r) Kidnapping (does not require a sexual purpose);

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(s) Assault with intent to commit any of the foregoing offenses;

(t) Attempting to commit any of the foregoing offenses;

(u) Conspiring to commit any of the foregoing offenses; or

(v) Any offense against a minor for which the offender agreed in a plea agreement to be subject to sex offender registration requirements.

2. Class B also includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity of any of the following crimes regardless of the age of the victim:

(a) First degree sexual abuse of a ward or resident of a hospital, treatment facility or other institution.

(b) Second degree sexual abuse of a ward or resident of a hospital, treatment facility or other institution.

(c) First degree sexual abuse of a patient or client.

(d) Second degree sexual abuse of a patient or client.

3. Class B also includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is the same as or substantially similar to that above.

### CLASS C OFFENDERS—"TEN YEAR" REGISTRANTS

*(Other Offenses Against Adult Victims)*

*(D.C. Official Code Secs. 22-4001(8), 4002(a), 4011(b)(2)(C))*

1. Class C includes offenders who are not included in Class A or Class B and have committed any of the following crimes against an adult (that is, a person 18 years of age or older):

(a) Third degree sexual abuse;

(b) Fourth degree sexual abuse;

(c) First or second degree burglary with intent to commit sex offense;

(d) Kidnapping with intent to commit sex offense;

(e) Threatening to commit a sexual offense (felony);

(f) Assault with intent to commit any of the foregoing offenses;

(g) Attempting to commit any of the foregoing offenses;

(h) Conspiring to commit any of the foregoing offenses, or;

(i) Any offense for which the offender agreed in a plea agreement to be subject to sex offender registration requirements.

2. Class C also includes offenders who are not included in Class A or Class B and have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is

the same as or substantially similar to that above.

### EXCEPTIONS (D.C. OFFICIAL CODE SEC. 22-4016(B))

The following do not constitute registration offenses:

1. Any sexual offense between consenting adults or an attempt, conspiracy or solicitation to commit such an offense, except for offenses to which consent is not a defense as provided in Section 218 of the Anti-Sexual Abuse Act of 1994 (D.C. Official Code §22-3017).

2. Any misdemeanor offense that involved a person's sexual touching or attempted or solicited sexual touching of an undercover law enforcement officer where the person believed that the officer was an adult.

3. Any misdemeanor offense committed against an adult, except where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

## PART 812—COLLECTION AND USE OF DNA INFORMATION

Sec.

812.1 Purpose.

812.2 Individuals subject to DNA collection.

812.3 Coordination with the Federal Bureau of Prisons.

812.4 Collection procedures.

APPENDIX A TO PART 812—QUALIFYING DISTRICT OF COLUMBIA CODE OFFENSES

AUTHORITY: 5 U.S.C. 301; Pub. L. 106-546 (114 Stat. 2726).

SOURCE: 67 FR 54100, Aug. 21, 2002, unless otherwise noted.

### §812.1 Purpose.

The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") cooperates with other federal agencies to ensure that DNA samples from offenders are appropriately furnished to the Federal Bureau of Investigation ("FBI") for DNA analysis. The results of the DNA analyses are to be included in the Combined DNA Index System ("CODIS").

### §812.2 Individuals subject to DNA collection.

CSOSA is responsible for collecting a DNA sample from each individual under its supervision who is, or has been, convicted of a qualifying District of Columbia Code offense. Qualifying District of Columbia Code offenses were designated by the Council of the

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District of Columbia in the “DNA Sample Collection Act of 2001.” CSOSA provides a listing of these offenses in the Appendix to this part. The list is presented for informational purposes only. Any future revision to the District of Columbia Code sections designating the qualifying offenses will be effective notwithstanding the timing of a conforming revision of the Appendix by CSOSA. CSOSA may choose not to collect a sample from an individual if it determines that CODIS already contains a DNA analysis for the individual.

#### § 812.3 Coordination with the Federal Bureau of Prisons.

(a) CSOSA will coordinate with the Federal Bureau of Prisons in order to obtain documentation regarding the collection of a DNA sample when the Federal Bureau of Prisons releases an inmate to CSOSA’s supervision or as requested by CSOSA.

(b) CSOSA shall provide the Federal Bureau of Prisons with documentation regarding the collection of a DNA sample from a District of Columbia Code offender when CSOSA returns the District of Columbia Code offender to the custody of the Federal Bureau of Prisons or as requested by the Federal Bureau of Prisons.

#### § 812.4 Collection procedures.

(a) DNA samples will be collected, handled, preserved, and submitted to the FBI in accordance with FBI guidelines.

(b) CSOSA has the authority to use such means as are reasonably necessary to collect a sample from an individual who refuses to cooperate in the collection of the sample. Unless CSOSA determines that there are mitigating circumstances, CSOSA will consider that an individual is refusing to cooperate if:

(1) The individual is being ordered or transferred to CSOSA’s supervision, but fails to report to CSOSA for collection of the sample within 15 business days of being sentenced to probation or being discharged from a correctional institution; or

(2) The individual is already under CSOSA supervision and has been notified by his or her Community Super-

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vision Officer of the time to report for collection of the sample, but fails to report for collection of the sample; or

(3) The individual has reported to CSOSA for collection of the sample, but fails to provide the sample after being given a minimum of one hour to do so; or

(4) The individual specifically states that he or she will not cooperate.

(c) When an individual has refused to cooperate in the collection of the sample, CSOSA deems the following to be reasonably necessary means for obtaining the sample:

(1) Impose administrative sanctions;

(2) Request a revocation hearing by the releasing authority; and/or

(3) Refer the individual who refuses to cooperate for criminal prosecution for a class A misdemeanor pursuant to section 4(a)(5) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135b(a)(5)).

[67 FR 54100, Aug. 21, 2002, as amended at 68 FR 19742, Apr. 22, 2003]

#### APPENDIX A TO PART 812—QUALIFYING DISTRICT OF COLUMBIA CODE OFFENSES

As enacted by the Council of the District of Columbia, the DNA Sample Collection Act of 2001 identifies the criminal offenses listed in Table 1 of this appendix as “qualifying District of Columbia offenses” for the purposes of the DNA Analysis Backlog Elimination Act of 2000 (Pub. L. 106–546, 114 Stat. 2726). Table 2 of this Appendix lists these same offenses in numerical order under the D.C. Code, 1981 Edition. Table 3 of this Appendix lists these same offenses in numerical order under the D.C. Official Code, 2001 Edition. The tables follow:

TABLE 1. OFFENSE LISTING

(1) Section 820 of An Act To establish a code of law for the District of Columbia (arson);

(2) Section 821 of An Act To establish a code of law for the District of Columbia (burning of one’s own property with intent to defraud or injure another);

(3) Section 848 of An Act To establish a code of law for the District of Columbia (malicious burning, destruction, or injury of another’s property);

(4) Section 803 of An Act To establish a code of law for the District of Columbia (assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse);

(5) Section 804 of An Act To establish a code of law for the District of Columbia, (assault with intent to commit mayhem or with dangerous weapon);

(6) Section 806a of An Act To establish a code of law for the District of Columbia (aggravated assault);

(7) Section 432(b) of the Revised Statutes, relating to the District of Columbia (assault on member of police force, campus or university special police, or fire department using a deadly or dangerous weapon);

(8) Section 807 of An Act To establish a code of law for the District of Columbia (mayhem or maliciously disfiguring);

(9) Section 3 of An Act for the protection of children in the District of Columbia and for other purposes (cruelty to children);

(10) Section 9 of An Act for the preservation of the public peace and the protection of property within the District of Columbia (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));

(11) Section 823 of An Act To establish a code of law for the District of Columbia (burglary);

(12) Section 875 of An Act To establish a code of law for the District of Columbia (incest);

(13) Section 872 of An Act To establish a code of law for the District of Columbia (certain obscene activities involving minors);

(14) Section 3 of the District of Columbia Protection of Minors Act of 1982 (sexual performances using minors);

(15) Section 812 of An Act To establish a code of law for the District of Columbia (kidnapping);

(16) Section 798 of An Act To establish a code of law for the District of Columbia (murder in the first degree);

(17) Section 799 of An Act To establish a code of law for the District of Columbia (murder in the first degree—obstructing railroad);

(18) Section 800 of An Act To establish a code of law for the District of Columbia (murder in the second degree);

(19) Section 802 of An Act To establish a code of law for the District of Columbia (voluntary manslaughter only);

(20) Section 802a of An Act To establish a code of law for the District of Columbia (murder of a law enforcement officer);

(21) Section 813 of An Act To establish a code of law for the District of Columbia (abducting, enticing, or harboring a child for prostitution);

(22) Section 1 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (pandering; inducing or compelling an individual to engage in prostitution);

(23) Section 2 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (com-

PELLING an individual to live life of prostitution against his or her will);

(24) Section 4 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (causing spouse to live in prostitution);

(25) Section 5 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (detaining an individual in disorderly house for debt there contracted);

(26) Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by section 808 of An Act To establish a code of law for the District of Columbia;

(27) Section 810 of An Act To establish a code of law for the District of Columbia (robbery);

(28) Section 811 of An Act To establish a code of law for the District of Columbia (attempted robbery);

(29) Section 811a of An Act To establish a code of law for the District of Columbia (carjacking);

(30) Indecent acts with children as this offense was proscribed until May 23, 1995 by section 103(a) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes;

(31) Enticing a child as this offense was proscribed until May 23, 1995 by section 103(b) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes;

(32) Sodomy as this offense was proscribed until May 23, 1995 by section 104(a) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes where the offense was forcible or committed against a minor;

(33) Section 201 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse);

(34) Section 202 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse);

(35) Section 203 of the Anti-Sexual Abuse Act of 1994 (third degree sexual abuse);

(36) Section 204 of the Anti-Sexual Abuse Act of 1994 (fourth degree sexual abuse);

(37) Section 205 of the Anti-Sexual Abuse Act of 1994 (misdemeanor sexual abuse);

(38) Section 207 of the Anti-Sexual Abuse Act of 1994 (first degree child sexual abuse);

(39) Section 208 of the Anti-Sexual Abuse Act of 1994 (second degree child sexual abuse);

(40) Section 209 of the Anti-Sexual Abuse Act of 1994 (enticing a child);

(41) Section 212 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse of a ward);

(42) Section 213 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse of a ward);

(43) Section 214 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse of a patient or client);

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(44) Section 215 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse of a patient or client);

(45) Section 217 of the Anti-Sexual Abuse Act of 1994 (attempts to commit sexual offenses); and

(46) Attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

TABLE 2. OFFENSE LISTING (D.C. OFFICIAL CODE, 1981 EDITION)

- (1) D.C. Code section 22-401—arson;
- (2) D.C. Code section 22-402—burning of one's own property with intent to defraud or injure another;
- (3) D.C. Code section 22-403—malicious burning, destruction or injury of another's property;
- (4) D.C. Code section 22-501—assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse;
- (5) D.C. Code section 22-502—assault with intent to commit mayhem or with dangerous weapon;
- (6) D.C. Code section 22-504.1—aggravated assault;
- (7) D.C. Code section 22-505(b)—assault on member of police force, campus or university special police, or fire department using a deadly or dangerous weapon;
- (8) D.C. Code section 22-506—mayhem or maliciously disfiguring;
- (9) D.C. Code section 22-901—cruelty to children;
- (10) D.C. Code section 22-1112(b)—lewd, indecent or obscene acts (knowingly in the presence of a child under the age of 16 years);
- (11) D.C. Code section 22-1801—burglary;
- (12) D.C. Code section 22-1901—incest;
- (13) D.C. Code section 22-2001—certain obscene activities involving a minor;
- (14) D.C. Code section 22-2012—sexual performances using minors;
- (15) D.C. Code section 22-2101—kidnapping;
- (16) D.C. Code section 22-2401—murder in the first degree;
- (17) D.C. Code section 22-2402—murder in the first degree (obstructing railroad);
- (18) D.C. Code section 22-2403—murder in the second degree;
- (19) D.C. Code section 22-2405—voluntary manslaughter only;
- (20) D.C. Code section 22-2406—murder of a law enforcement officer;
- (21) D.C. Code section 22-2704—abducting, enticing, or harboring a child for prostitution;
- (22) D.C. Code section 22-2705—pandering; inducing or compelling an individual to engage in prostitution;
- (23) D.C. Code section 22-2706—compelling an individual to live life of prostitution against his or her will;
- (24) D.C. Code section 22-2708—causing spouse to live in prostitution;

(25) D.C. Code section 22-2709—detaining an individual in disorderly house for debt there contracted;

(26) D.C. Code section 22-2801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;

(27) D.C. Code section 22-2901—robbery;

(28) D.C. Code section 22-2902—attempted robbery;

(29) D.C. Code section 22-2903—carjacking;

(30) D.C. Code section 22-3501(a) [repealed May 23, 1995]—indecent acts with children;

(31) D.C. Code section 22-3501(b) [repealed May 23, 1995]—enticing a child;

(32) D.C. Code section 22-3502(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;

(33) D.C. Code section 22-4102—first degree sexual abuse;

(34) D.C. Code section 22-4103—second degree sexual abuse;

(35) D.C. Code section 22-4104—third degree sexual abuse;

(36) D.C. Code section 22-4105—fourth degree sexual abuse;

(37) D.C. Code section 22-4106—misdemeanor sexual abuse;

(38) D.C. Code section 22-4108—first degree child sexual abuse;

(39) D.C. Code section 22-4109—second degree child sexual abuse;

(40) D.C. Code section 22-4110—enticing a child;

(41) D.C. Code section 22-4113—first degree sexual abuse of a ward;

(42) D.C. Code section 22-4114—second degree sexual abuse of a ward;

(43) D.C. Code section 22-4115—first degree sexual abuse of a patient or client;

(44) D.C. Code section 22-4116—second degree sexual abuse of a patient or client;

(45) D.C. Code section 22-4118—attempts to commit sexual offenses;

(46) Attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

TABLE 3. OFFENSE LISTING (D.C. OFFICIAL CODE, 2001 EDITION)

- (1) D.C. Code section 22-301—arson;
- (2) D.C. Code section 22-302—burning of one's own property with intent to defraud or injure another;
- (3) D.C. Code section 22-303—malicious burning, destruction, or injury of another's property;
- (4) D.C. Code section 22-401—assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse;
- (5) D.C. Code section 22-402—assault with intent to commit mayhem or with dangerous weapon;
- (6) D.C. Code section 22-404.01—aggravated assault;
- (7) D.C. Code section 22-405(b)—assault on member of police force, campus or university

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special police, or fire department using a deadly or dangerous weapon;

(8) D.C. Code section 22-406—mayhem or maliciously disfiguring;

(9) D.C. Code section 22-801—burglary;

(10) D.C. Code section 22-1101—cruelty to children;

(11) D.C. Code section 22-1312(b)—lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years);

(12) D.C. Code section 22-1901—incest;

(13) D.C. Code section 22-2001—kidnapping;

(14) D.C. Code section 22-2101—murder in the first degree;

(15) D.C. Code section 22-2102—murder in the first degree—obstructing railroad;

(16) D.C. Code section 22-2103—murder in the second degree;

(17) D.C. Code section 22-2105—voluntary manslaughter only;

(18) D.C. Code section 22-2106—murder of a law enforcement officer;

(19) D.C. Code section 22-2201—certain obscene activities involving minors;

(20) D.C. Code section 22-2704—abducting, enticing, or harboring a child for prostitution;

(21) D.C. Code section 22-2705—pandering; inducing or compelling an individual to engage in prostitution;

(22) D.C. Code section 22-2706—compelling an individual to live life of prostitution against his or her will;

(23) D.C. Code section 22-2708—causing spouse to live in prostitution;

(24) D.C. Code section 22-2709—detaining an individual in disorderly house for debt there contracted;

(25) D.C. Code section 22-2801—robbery;

(26) D.C. Code section 22-2802—attempted robbery;

(27) D.C. Code section 22-2803—carjacking;

(28) D.C. Code section 22-3002—first degree sexual abuse;

(29) D.C. Code section 22-3003—second degree sexual abuse;

(30) D.C. Code section 22-3004—third degree sexual abuse;

(31) D.C. Code section 22-3005—fourth degree sexual abuse;

(32) D.C. Code section 22-3006—misdemeanor sexual abuse;

(33) D.C. Code section 22-3008—first degree child sexual abuse;

(34) D.C. Code section 22-3009—second degree child sexual abuse;

(35) D.C. Code section 22-3010—enticing a child;

(36) D.C. Code section 22-3013—first degree sexual abuse of a ward;

(37) D.C. Code section 22-3014—second degree sexual abuse of a ward;

(38) D.C. Code section 22-3015—first degree sexual abuse of a patient or client;

(39) D.C. Code section 22-3016—second degree sexual abuse of a patient or client;

(40) D.C. Code section 22-3018—attempts to commit sexual offenses;

(41) D.C. Code section 22-3102—sexual performances using minors;

(42) D.C. Code section 22-3801(a) [repealed May 23, 1995]—indecent acts with children;

(43) D.C. Code section 22-3801(b) [repealed May 23, 1995]—enticing a child;

(44) D.C. Code section 22-3802(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;

(45) D.C. Code section 22-4801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;

(46) D.C. Code section 22-1803 or section 22-1805a—attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

[67 FR 54100, Aug. 21, 2002, as amended at 68 FR 19742, Apr. 22, 2003]